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HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1292nd MEETING

Held at Headquarters, New York,
on Monday, 21 March 1994, at 10.30 a.m.

Chairman: Mr. ANDO

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 11 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fiftieth session of the Human Rights Committee.

STATEMENT BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL

2. Mrs. KLEIN (Representative of the Secretary-General) informed the Committee that the General Assembly had confirmed the appointment of Ambassador José Ayala Lasso of Ecuador as High Commissioner for Human Rights. The post of High Commissioner had been created by the General Assembly at its forty-eighth session as a follow-up to a recommendation contained in the Vienna Declaration and Programme of Action. The High Commissioner would be responsible, inter alia, for making recommendations to competent bodies of the United Nations system with a view to improving the promotion and protection of all human rights; for engaging Governments in a dialogue with a view to securing respect for all human rights; and for coordinating human rights activities throughout the United Nations system, including, in that regard, rationalizing, adapting, strengthening and streamlining United Nations human rights machinery. In meeting the challenges of his mandate, the High Commissioner would clearly need the good will and collaboration of all States, human rights bodies, intergovernmental agencies and non-governmental organizations, including the Human Rights Committee. In a recent statement to the Commission on Human Rights, he had placed special emphasis on the importance of compliance by all States with obligations undertaken by them in ratifying or acceding to international human rights instruments.

3. She drew attention to several human rights resolutions which had been adopted by the General Assembly at its forty-eighth session, including resolution 48/119. In that resolution, the Assembly had noted with satisfaction the efforts of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to further improve their working methods, in particular by adopting "concluding observations" containing specific suggestions and recommendations as to steps States parties could take to implement the International Covenants on Human Rights more effectively. The General Assembly had also encouraged the Committees to consider further innovations in their working methods, in particular those aimed at the prevention of serious human rights violations and at the promotion of peaceful solutions. In addition, the General Assembly had once again invited the Committees to identify specific needs of States parties that could be addressed through the advisory services and technical assistance programme of the Centre for Human Rights, with possible participation of members of one of the Committees, where appropriate.

4. In resolution 48/120, the Assembly had requested the Secretary-General, inter alia, to give high priority to establishing a computerized database to improve the functioning of treaty bodies. In that regard, she noted that, since the establishment of a comprehensive database in the Centre for Human Rights would be a long-term process, the International Instruments Branch had initiated

(Mrs. Klein)

contacts with international organizations, with a view to enabling the treaty bodies to make use of existing databases within those organizations as soon as possible.

5. At the fiftieth session of the Commission on Human Rights, the Commission had called on States to disseminate at the national level reports submitted to the Human Rights Committee, the summary records relating to the examination of those reports, and the comments of the Committee. The Commission had also adopted a number of resolutions relating to the work of the treaty bodies in general, and the Committee in particular. It had welcomed the adoption by the Committee of its general comments on article 18, and had endorsed the view of the Committee that the right to freedom, thought, conscience and religion was far-reaching and profound. The Commission had appointed a Special Rapporteur on violence against women, and had invited that official to make use of information provided by human rights treaty bodies. The Commission had also invited the treaty bodies to focus attention on violations of the human rights of women.

6. The Commission had adopted a resolution on the succession of States in respect of international human rights treaties, referring, in particular, to the relevant decisions of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. Moreover, the Commission had requested the human rights treaty bodies to consider their continuing ability to assist States parties in meeting their obligations.

7. The Committee on the Elimination of Racial Discrimination, which, to date, had been financed through contributions from States parties, would in future be financed from the regular budget. She noted also that the Committee against Torture had completed its first inquiry procedure under article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by issuing a summary of its proceedings on Turkey in its annual report to the forty-eighth session of the General Assembly. The procedure had been initiated in April 1990 pursuant to a communication submitted by a non-governmental organization alleging the systematic practice of torture in Turkey. Having examined those allegations, the Committee had requested two of its members to make a confidential inquiry, including a field mission. On 9 November 1993, the Committee had decided, on the basis of the findings of the members of the mission of inquiry, and on other grounds, to make public an account of the results of the inquiry.

8. All the treaty bodies had decided to issue concluding comments reflecting their views on reports submitted by States parties. The procedure initiated by the Human Rights Committee in March 1992 had served as a valuable model.

ADOPTION OF THE AGENDA (CCPR/C/96)

9. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS

Provisional programme of work

10. The CHAIRMAN drew attention to the provisional programme of work distributed to the members of the Committee.

11. Mr. SADI, noting that the third periodic report of Jordan was included in the provisional programme, informed the Committee that Jordan would not be attending the current session of the Committee.

12. The CHAIRMAN confirmed that he had received a note to that effect from the Permanent Representative of Jordan. He suggested the Committee should use the time made available to consider communications. Alternatively, the Committee could use the time to consider oral reports from States parties which had been requested to submit reports to the Committee at a previous session.

13. Mr. DIMITRIJEVIĆ said that the Committee should note for the record that Jordan's dealings with the Committee had been irregular. It should not have to be subjected to that kind of treatment.

14. The CHAIRMAN said he would take note of the comments of Mr. Dimitrijević.

15. Mr. PRADO VALLEJO asked whether, in the light of Jordan's absence, the Committee should consider its agenda as a whole and not just the programme of work for the following few days.

16. Mr. EL-SHAFEI said that the deeply regretted Jordan's absence and had been informed only recently that Jordan would not be attending. Moreover, it was not standard practice for Jordan, which had, to date, always acted promptly in its dealings with the Committee, to fail to appear before the Committee. He suggested that the Chairman should contact the Jordanian delegation in order to determine when it would be able to appear.

17. Mr. LALLAH suggested that the Committee should use Jordan's absence as an opportunity to return to the question of article 27 and perhaps complete its work on that question. He suggested that the Committee should use for that purpose one of the meetings which it would have used for consideration of the periodic report of Jordan.

18. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the provisional programme of work.

19. The provisional programme of work was adopted.

Reports of the Chairman of the Working Group

20. Mrs. HIGGINS (Chairman of the Working Group on Communications) listed the members of the Working Group and said that it had held five meetings and had adopted two conference room papers: one paper on the implications of the judgement of the Judicial Committee in the Pratt and Morgan case; and a second

(Mrs. Higgins)

paper concerning proposals of the Special Rapporteur on Follow-Up. A working paper proposing certain amendments to the rules of procedure of the Committee had also been adopted. In addition, the Working Group had adopted seven recommendations concerning final views to be forwarded under article 5 (4) of the Optional Protocol; five recommendations to declare communications inadmissible; and 10 decisions declaring communications admissible. It had begun discussion of three additional communications, but had not completed them for lack of time.

21. Mr. WENNERGREN (Chairman of the Working Group on Article 40) said that the Working Group had held four meetings and had prepared lists of issues for the second periodic reports of Cameroon and El Salvador, and for the third periodic reports of Jordan, Mexico and Costa Rica. In addition, consideration had been given to a draft third optional protocol to the Covenant aimed at guaranteeing, under all circumstances, the right to a fair trial. The draft had been prepared by the Subcommission on Prevention of Discrimination and Protection of Minorities and had been submitted to the Commission on Human Rights for subsequent consideration. The Subcommission had requested that the Secretary-General should transmit the draft to the Committee for written documents and suggestions. He noted with appreciation the contribution of Mrs. Higgins and Mr. Ndiaye to the Working Group's consideration of the draft. The Working Group would submit a written report on its discussion that would contain draft comments and suggestions.

22. The Assistant Secretary-General for Human Rights had requested guidance and practical suggestions with regard to human rights education. His letter had been circulated among members of the Committee for comments and suggestions, and recommendations had been received from one member. The Working Group had discussed the issue and decided to submit the recommendations to the Chairman of the Committee.

23. Another issue that the Working Group had to consider was the format of the annual report. The issue had arisen because of the absence of summary records for the forty-ninth session of the Committee. The Working Group would submit a brief report on the question that would contain suggestions as to how the Committee might proceed in the future.

24. Mrs. Evatt had submitted a draft general comment on article 25, which the Working Group would consider on some appropriate occasion during the current session.

25. Mr. HERNDL asked whether it would not be possible to prepare summary records for the forty-ninth session by using tape recordings of the meetings. It would be regrettable if the records of the Committee's meetings were not complete.

26. The CHAIRMAN asked the secretariat to clarify the situation with respect to summary records for the forty-ninth session.

27. Mrs. KLEIN (Representative of the Secretary-General) said that, in principle, it would be possible to prepare summary records for past meetings. However, the Office of Conference Services would have to be provided with additional resources to accommodate the additional expense involved. In any case, the records would probably not be available in time for the July 1994 session of the Committee.

28. The CHAIRMAN said he would remain in contact with the Secretariat with regard to the question of summary records.

29. Mr. HERNDL said he found the situation with respect to the summary records to be highly irregular. The Committee would be subject to criticism for gaps in its reporting if it did not have summary records on which to base its annual report. The only way to avoid such criticism would be to see to it that the necessary records were prepared. Any additional resources required for that purpose should be made available immediately on a priority basis, so that the next report would not suffer.

30. The CHAIRMAN said he would make every effort to comply with the Committee's wishes. Also, he would inform the Committee of the financial implications of any decision to prepare summary records after the fact.

Lists of issues to be taken up in connection with the consideration of reports submitted by States parties under article 40 of the Covenant

Third periodic report of Costa Rica (CCPR/C/70/Add.4)

Section I

31. Mr. SADI said that a question should be added to section I (a) inquiring whether the report of Costa Rica had been disseminated publicly. The Committee should not hear only the official view on the implementation of the Covenant; the reflections of other groups, such as non-governmental organizations, would be very useful.

32. Mrs. HIGGINS proposed that section I should be divided into a new section I covering paragraphs (a), (b) and (c) (articles 2, 4 and 26 of the Covenant) and a new section II including paragraphs (d) to (i) (articles 6, 7, 9 and 10). Such a division would enable the Committee to have a more coherent discussion.

33. Mr. LALLAH said that, in order to avoid the need to produce an amendment to the document, the Chairman could ask the delegation to answer the questions in paragraphs (a), (b) and (c) together, then proceed to other questions.

34. Mr. WENNERGREN said that those items had been grouped in one section because the first three questions could be dealt with quickly. He favoured Mr. Lallah's proposal in order to save time.

35. Mrs. CHANET said that she favoured the proposal by Mrs. Higgins to separate the issues regarding the institutional and legal framework within which the Covenant was implemented from the other matters addressed in that section, but could agree to Mr. Lallah's proposal.

36. Mr. POCAR said that article 26 of the Covenant should be considered in the context of section II, and that article 2 should appear only under section I.

37. Mr. SADI said that paragraph (h) appeared superfluous, since no judicial system in the world allowed confessions or testimony obtained under duress to be used in court proceedings. Furthermore, paragraphs (f) and (g) could be combined, and the meaning of "specific measures" should be clarified.

38. Mr. WENNERGREN said that he would prefer to retain paragraph (h). Although procedural guarantees were dealt with separately, a discussion of that question might be useful to lead into other procedural matters such as the burden of proof.

39. Mr. MAVROMMATIS agreed that the paragraph should be retained. Undoubtedly, such confessions were excluded from use in court proceedings, but there was also no doubt that most convictions were based on confessions. The procedure used in deciding what constituted duress was a very important issue.

Section II

40. Mrs. EVATT said that article 17 of the Covenant should be considered under section II. Although none of the questions dealt specifically with articles 19, 21 or 22, she would take the opportunity to ask a question regarding article 22 when the Costa Rican delegation was present.

41. Mr. LALLAH said that the organization of the articles under section II was inconsistent with other lists of issues, since articles 2, 3 and 26 were usually taken together. He proposed that paragraph (a) of section II should be included in section I, since it related to article 26 on non-discrimination.

42. Mrs. HIGGINS proposed that, in the interest of a coherent discussion, section I should include, in addition to the current paragraphs (a), (b) and (c), paragraph (a) of section II, which would become paragraph (d).

43. Section II, covering articles 6, 7, 9 and 10, would include paragraphs (d) to (i) of the current section I. A new section III would include paragraphs (b), (c), (d) and (e) of the current section II.

44. Mr. POCAR said that the headings of the sections must be adjusted to reflect the issues they contained.

45. Mr. PRADO VALLEJO said that paragraph (e) of section II should be more specific as to whether the minorities in question were racial, religious or political.

46. Mr. HERNDL said that the third periodic report of Costa Rica had not made any reference to the enjoyment of rights by minorities, while the second periodic report had stated only in passing that the information in the first report was still valid. He hoped, therefore, that a dialogue concerning minorities and the enjoyment of their rights could be initiated. Paragraph (d) could be reworded to read:

> "Please provide information on the extent to which minorities do effectively enjoy their rights under the Covenant. Have any special legislative and administrative measures been taken to that effect?"

47. Mr. POCAR said that the wording "persons belonging to minorities" should be used.

48. Mr. SADI said that, in paragraph (a), "activities" should be replaced by "affirmative action, whether legal or administrative", in order to make the question more specific.

49. The CHAIRMAN said that the suggestions of members of the Committee had been noted and would be reflected by the secretariat in the revised list of issues to be provided to the delegation of Costa Rica.

50. Sections I and II, as orally amended, were adopted.

Third periodic report of Mexico (CCPR/C/76/Add.2)

Sections I, II and III

51. Mrs. HIGGINS said that section I should begin with consideration of the constitutional and institutional issues. Accordingly, paragraph (a) concerning recent events in Chiapas, should follow paragraph (g), and the final phrase should be amended to read "... notably articles 25, 26 and 27". Other questions on Chiapas, relating to rights under other relevant articles, should be included at the beginning of sections II and III to allow for a more structured and focused discussion.

52. Mr. POCAR said that the inclusion of paragraph (c) in section III seemed not to follow the Committee's normal practice. Perhaps that paragraph could be moved to section I.

53. Mr. SADI said that paragraph (b) of section III, referring to the murder of media representatives, should also address the issue of punishment of the culprits.

54. Mr. PRADO VALLEJO asked whether there was a specific reason for the inclusion of paragraph (d) in section III.

55. Mrs. CHANET, commenting on paragraph (c) of section III, said that discrimination often manifested itself as an aspect of a broader issue, which was why paragraphs 425 and 426 of the report, on the employment of Mexican nationals, were the subject of a question relating to the broader issues of the

(Mrs. Chanet)

rights of foreign workers and the rights of foreign workers and the rights of foreigners to move about the country. Paragraph (b) of section III, concerning the murder of media representatives, could be seen as an issue affecting the media as such or as falling under article 6, concerning the right to life. In fact it was not unusual for questions to relate to various articles. That was why those specific paragraphs had been included under section III rather than section I.

56. The CHAIRMAN said that paragraph (c) of section III could be made more general by deleting the reference to articles 2 and 26.

57. Mr. BRUNI CELLI asked whether a question could be included in the list of issues concerning the publication of the country report in Mexico itself.

58. The CHAIRMAN said that it would be preferable to put such a question from the floor.

59. Mr. POCAR said that paragraph (a) of section III would be better placed under section I, since it clearly related to article 25.

60. The CHAIRMAN said that paragraph (a) would be moved to section I, following paragraph (g).

61. Sections I, II and III, as orally amended, were adopted.

Third periodic report of Cameroon (CCPR/C/63/Add.1)

Section I

62. Section I was adopted.

Section II

63. Section II was adopted.

Section III

64. Mrs. HIGGINS noted that there was a mismatch between the title of section III and the listing of articles, and the articles to which the questions under section III actually related.

65. The CHAIRMAN said that section III would be reorganized accordingly.

66. Section III, as orally amended, was adopted.

Second periodic report of El Salvador (CCPR/C/51/Add.8)

Sections I, II and III

67. Mr. POCAR said that the sections should be arranged so that section I dealt with constitutional and institutional issues and section II with other matters. Not all the articles listed in section III seemed to have questions relating to them.

68. Mrs. HIGGINS asked why there was a reference to article 11 under section I.

69. Mrs. CHANET agreed that questions on the constitutional and institutional framework should appear as a separate section. The very specific circumstances in El Salvador, with issues relating to disappearances and what could even be seen as prisoners of war, had led the Working Group to structure section I in such a way as to enable the Committee to engage in a wide-ranging debate on the situation, without following the normal structure of the Committee's deliberations.

70. Mr. AGUILAR agreed that section I should be split. In connection with paragraph (a) of section II, concerning Decree No. 486 and the report of the Commission on the Truth, the country report contained no details of the deaths and disappearances that had occurred in the country, an issue which the Committee should certainly pursue. The dates in paragraph (n) of section I might need to be amended. It was quite possible that people still remained in detention.

71. The CHAIRMAN said that sections I and II would be rearranged. Paragraph (n) of section I could be reformulated to include a reference to the measures taken to investigate deaths and disappearances. Section II would then deal with questions relating to physical liberty.

72. Mr. BRUNI CELLI said that in a number of instances in Latin America of transitions from regimes based on force to democratic systems, laws had been adopted which had led to full pardons of criminal acts. The aim in paragraph (a) of section II was to ensure that victims of violations had effective remedies and that compensation was available to them or their family members. Events had been reported to the Commission on the Truth that should not be covered under the Amnesty Law, which should not be allowed to become the full impunity law.

The meeting rose at 1.05 p.m.

The meeting was called to order at 3.15 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Proposed programme of work

1. The CHAIRMAN, referring to the proposed programme of work, said that since the Committee would not be considering the third periodic report of Jordan, the Bureau proposed that the meetings on 22 March 1994 should be devoted to the draft general comment and that both meetings on 23 March 1994 should be devoted to communications.

2. He took it that the Committee adopted the proposed programme of work, as orally amended.

3. It was so decided.

4. The CHAIRMAN said that, in connection with the Committee's request for a special report on the implementation of certain articles of the Convention, the Mission of Burundi had indicated that it was willing to send representatives to the Committee to provide an oral report.

5. Mrs. HIGGINS said that the Committee's agreeing to hear an oral report from Burundi would create an unfortunate precedent; the Committee needed a report from the highest levels of government, consistent with the requirements of the Covenant. The Committee needed a written report in order to be able to prepare for its consideration and check information against its own sources. She therefore recommended that Burundi should be asked to submit a written report for consideration by the Committee in July.

6. Mr. SADI agreed; in requesting additional information, the Committee had specified that it should be submitted in writing and by a certain date. If the Committee waived those requirements, it would establish a precedent and its own credibility would suffer. The Committee needed to have a high-level dialogue with people who were well prepared and privy to events in Burundi.

7. Mr. DIMITRIJEVIĆ said that he fully agreed; the Committee, and the public at large, needed a report in written form on the exact situation in Burundi.

8. Ms. EVATT agreed that the Committee should maintain its established procedures in dealing with reports from States Parties. However, she had some misgivings about the means by which the Committee had selected certain States and requested them to submit special reports and the appropriateness of requesting reports in situations where there was a breakdown of State structures.

9. Mrs. CHANET agreed that the Committee should follow its procedures and not make exceptions for certain countries. She asked how the question of making an oral report had arisen and whether the offer to make an oral report had constituted a refusal to submit a written report; if so, there would be no

(Mrs. Chanet)

possibility of receiving a written report. Some response would have to be made to Burundi's offer.

10. Mr. NDIAYE said that, while he agreed with earlier speakers, he felt that the Committee should not discourage the Government of Burundi; it should send a courteous letter explaining why it could not hear an oral report, and perhaps setting a new time-limit of reasonable duration.

11. Mr. EL-SHAFEI said that Burundi was going through an unusual situation and it was unlikely to be in a position to provide a written report. If its representatives appeared before the Committee, that would be a demonstration of Burundi's accountability and would show that the Committee was able to have a dialogue with a country that was passing through difficulties. The Committee should not set a further time-limit if it had the opportunity of receiving up-to-date information at the current session; it should not determine in advance that the information would be too meagre. The Committee should listen to the oral report from Burundi; it could then ask for more specific information in written form.

12. Mr. WENNERGREN said that he agreed; the situation in Burundi was so alarming that it would be unfortunate not to take advantage of the opportunity to meet the Ambassador of Burundi to exchange views and receive information. The Committee could also specify what kind of written report it would need at a later stage.

13. Mr. POCAR said that since the Committee had decided to ask for a special report to be submitted by the end of January, it would have to take certain action if the report was not submitted; it had not decided what to do in such cases. The time-limit should be extended, perhaps informally, and Burundi should be informed that if it had difficulty in preparing the report, it could request advisory services for the purpose. If Burundi was unable to submit a report in July, the Committee could consider the situation in the absence of a report.

14. Mr. LALLAH said that in order to preserve the value of the special reports it requested, the Committee should insist on receiving written reports, as in the case of Iraq and Yugoslavia. If Burundi presented an oral report, it would not be possible to consider it in a systematic manner, and such a report would be a rather useless tool in an alarming situation. To extend the time-limit for much longer than the initial time-limit would be difficult; it could perhaps be extended to July or August so that the Committee could consider the report in October.

15. Mr. AGUILAR said that, in view of the critical situation in Burundi, the Committee should consider the situation as soon as possible and not wait until October. The Committee should request a written report as soon as possible for consideration in July.

16. Mr. MAVROMMATIS said that the Committee could not do without a report in the circumstances; to do so would undermine its role of requesting special

(Mr. Mavrommatis)

reports about grave situations. The Chairman should try to persuade Burundi to submit a report, even if it was short.

17. Mr. FRANCIS said that in another situation the Committee had been unwilling to waive a country's obligation to formalize its comments in a report; therefore, the Committee could not grant such a possibility to Burundi.

18. Mrs. KLEIN (Representative of the Secretary-General) said that the Secretariat had informed the Government of Burundi of the Committee's request for a special report; it had not received a reply by mid-February, and had then informed the Government of Burundi that the Committee would be considering the question in March and requested it to submit a report as soon as possible. No reply had been received, and the Secretariat had therefore contacted the Permanent Mission of Burundi, which had indicated that it was not aware of any report but that, if the Committee wished, representatives of Burundi could go to the Committee to explain the situation.

19. The CHAIRMAN said that he would contact the Ambassador of Burundi for further clarification of the situation; however, it seemed that the consensus was not to proceed with an oral presentation by Burundi. He took it that those were the Committee's wishes.

20. It was so decided.

21. The CHAIRMAN said that the Committee would therefore consider the draft general comment on the afternoon of 25 March 1994, as originally planned.

Lists of issues to be taken up in connection with the consideration of the reports submitted by States parties in conformity with article 40 of the Covenant

Second periodic report of El Salvador (CCPR/C/51/Add.8)

Section I

22. The CHAIRMAN recalled that it had been suggested at the previous meeting that section I should consist of paragraphs (a) to (e) and that paragraphs (f) to (n) should form a new section II. Paragraph (a) of the existing section II should be moved to section I. A new paragraph about missing persons and persons in detention would be added to section II.

23. Mr. AGUILAR, referring to paragraph (i) of the new section II, said that it seemed absurd to ask such a question in the aftermath of a war, when it was obvious that there had been many violations of any rules and regulations there might have been governing the use of weapons by police and security forces. He suggested that paragraph (i) should be deleted altogether; the Committee could always ask oral questions on that aspect.

24. Section I, as orally amended was adopted.

25. The CHAIRMAN said that the current section II would become the new section III on article 14 and that, if he heard no objection, he would take it that the Committee wished to adopt it, minus its paragraph (a), now transferred to section I.

26. It was so decided.

27. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the new section IV, the former section III.

28. It was so decided.

29. The list of issues to be taken up in connection with the consideration of the second periodic report of El Salvador, as amended, was adopted.

Third periodic report of Jordan

30. Mr. POCAR said that one option with respect to the list of issues relating to Jordan's report would be to consider it as provisional, and subject to reconsideration by the Working Group in July, which could then make another recommendation to the plenary; another would be to go straight to the plenary with the current list or to finalize it at the current session. In any case, the status of the provisional list had to be made clear to the Government concerned.

31. Mr. WENNERGREN said that the list was just a recommendation by the Working Group which could be finalized by the Committee at its July session. The Permanent Mission of Jordan should be informed accordingly.

32. Mr. NDIAYE said that it would be preferable to finalize the list at the current session in order to give Jordan time to prepare its replies. As for any new issues which might arise before July, since each member of the Committee could ask oral questions, the Committee could always adapt the definitive list to the circumstances.

33. Mr. DIMITRIJEVIĆ said the most advisable procedure would be for the Secretariat to notify the Jordanian mission informally that the current list was a preliminary one, that a final list would be established when Jordan came before the Committee to answer questions on its periodic report, and that in addition to the main questions there were usually supplementary questions.

34. Mr. MAVROMMATIS said that in all fairness, the Committee should try to adopt the list at the current session. However, nothing prevented the Committee as a whole or individual members from asking further or new questions that might arise before the July session.

35. Mrs. EVATT said that the list should be adopted at the current session, while leaving open the possibility of supplementing it prior to the next session. That would enable Jordan to treat it as the official list and prepare to deal in July only with amendments or additions.

36. Mr. LALLAH, supported by Mr. FRANCIS and Mr. AGUILAR, said that the Committee should deal fairly and equally with all States whose reports it was examining. There was no reason to adopt the list at the current session: the Committee only adopted lists of issues when it was going to consider a report, not when one was scheduled. Moreover, there were a number of other points on which the Committee might wish to ask questions officially.

37. Mr. BRUNI CELLI agreed that the list should not be discussed at the current session. It could be taken up when the Government of Jordan decided to come before the Committee.

38. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished him to inform Jordan that the list of issues was provisional. A new list of issues would be adopted when Jordan came before the Committee to answer questions relating to its periodic report.

39. It was so decided.

The meeting rose at 4.20 p.m.

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HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1294th MEETING

Held at Headquarters, New York,
on Tuesday, 22 March 1994, at 10 a.m.

Chairman: Mr. ANDO

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Consideration of reports submitted by States parties under article 40 of the Covenant

Draft general comment on article 27 of the Covenant

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Draft general comment on article 27 of the Covenant (CCPR/C/49/CRP.1)

1. The CHAIRMAN recalled that, at its previous session, the Committee had provisionally adopted paragraph 1 of the draft general comment (CCPR/C/49/CRP.1). Suggested amendments to paragraph 2 had been circulated in a note by the Committee secretariat.

Paragraph 2

2. Mrs. HIGGINS said that she was the originator of the suggested amendment to the third sentence. With respect to the second sentence, she wished to propose a reordering so that the right to self-determination was mentioned before the right to non-discrimination. The aim of the Committee should be to eliminate any confusion between the three rights: self-determination, non-discrimination and equality before the law.

3. Mr. DIMITRIJEVIĆ said that it was wrong to equate minority rights with self-determination, and it was also wrong, as some States parties did, to then proceed to the assumption that they had no minorities. While he could accept the suggestion made by Mrs. Higgins, there was still an element of repetition. It might be clearer to group the sources of the confusion, namely certain communications and certain reports submitted by States parties, in the first sentence, and then clarify the situation by distinguishing the three rights in question.

4. Mr. POCAR said that the Covenant did not actually provide for any right to non-discrimination; the Committee had previously described the concept as a principle. Further, in its consideration of communications, the Committee had consistently taken the approach that article 2 could be invoked only in conjunction with rights protected under other articles of the Covenant.

5. Mr. WENNERGREN said that the paragraph actually covered two kinds of confusion: between article 27 and the right of peoples to self-determination, and between article 27 and various other articles that had elements in common with it. Accordingly, it was important to draw a distinction between the right to self-determination and minority rights. The confusion between article 27 and the other rights referred to in paragraph 2 might be better dealt with in paragraph 4.

6. Mrs. CHANET said that the only real purpose of paragraph 2 was to provide an introduction to the later paragraphs in the draft general comment, and that it would thus suffice to note that no clearly drawn distinction had been made between article 27 and the right to self-determination and between articles 27 and 26. To attempt more might simply add to the existing confusion.

7. Mr. EL-SHAFEI said that the suggested amendments improved the original text. The confusion between article 27 and self-determination was more significant than that between article 27 and articles 2 (1) and 26. He suggested that the beginning of the paragraph could be reworded to read: "In some communications submitted to the Committee under the Optional Protocol, and reports submitted by States parties under article 40 of the Covenant, the right protected under article 27 has been confused with the right of peoples to self-determination proclaimed in article 1 of the Covenant." The second sentence could then refer to non-discrimination and to equality before the law and equal protection of the law. With respect to the third sentence, he preferred the original language. In any event, to say that States insisted that they had no minorities was too strong; it would be preferable to say that they claimed that they had no minorities. The question of whether non-discrimination was a right or a principle could be avoided by using the term "practice".

8. The CHAIRMAN said that in drafting the text, Mr. Lallah had sought to enumerate the rights in connection with which there was confusion, and had then gone on to develop the issues further in subsequent paragraphs. Committee members might bear that structure in mind in making suggestions.

9. Mr. DIMITRIJEVIĆ said that the Committee's difficulties might be resolved by rewording the beginning of the paragraph to read: "In some reports submitted by States parties under article 40 as well as in some communications submitted to the Committee under the Optional Protocol, the rights under article 27 have been identified with the right to self-determination or reduced to the mere operation of the principle of non-discrimination." Such wording would indicate that there might be some overlapping between the right to self-determination and the principle of non-discrimination, but that they were not the same. He could accept the formulation of the end of the paragraph suggested by Mrs. Higgins, with the inclusion of the idea that States wrongly claimed that they had no minorities.

10. Mr. SADI questioned whether in drafting a general comment it was appropriate to make specific references to some communications or some reports of States parties. The aim of a general comment was to make a direct statement of principle. It would thus be better to make a general statement that the rights under article 27 should not be confused with the other rights referred to in the paragraph, but to avoid specific references.

11. Mr. LALLAH said it seemed that agreement was emerging. Paragraph 2 should be read in the context of the structure of the general comment as a whole. It was important to highlight the essential point at the beginning, the aim being to eliminate the confusion that seemed to exist.

12. Regarding the proper content of a general comment, the Committee had based its earlier general comments on its experience of reports submitted by States parties, so that it seemed entirely appropriate to follow a similar practice for the general comment on article 27. With reference to the ordering of the ideas, he had sought to follow the order presented in the Covenant itself, which was why he had begun with self-determination, dealt with in article 1. The reference to non-discrimination had been an attempt to use a short form, but the Committee could expand the language to make it more precise. The overall aim of

(Mr. Lallah)

the paragraph was to find a diplomatic means of telling States parties that they had confused certain elements of the Covenant, although he was not sure that States parties had confused article 27 with self-determination, an issue that had arisen, rather, in communications.

13. Mr. POCAR said that his main concern was that the Covenant did not provide for any right to non-discrimination, and that it would be preferable to refer to the principle of non-discrimination. Further, article 2 did not provide for any autonomous right, although the drafting of the paragraph suggested that it did.

14. Mrs. EVATT agreed that some elements of the confusion were present in communications rather than the reports of States parties, a point which should be retained. The paragraph did not really require much amendment. It would suffice to delete the reference to the right to self-determination from the second sentence, and to refer to freedom from discrimination rather than to non-discrimination. The preliminary nature of paragraph 2 should be retained, and the Committee should enter into substance later in the draft general comment, so that it might be preferable to move the last sentence to paragraph 4.

15. Mrs. HIGGINS said that she could support Mrs. Evatt's suggestions, and agreed that one kind of confusion was to be found in some communications and another kind in reports by States. She would therefore suggest that the second sentence of paragraph 2 should be reworded to read: "Further, in reports submitted by States parties under article 40 of the Covenant, the obligations of States under article 27 have sometimes been confused with the duty under article 2 (1) to ensure the rights guaranteed under the Covenant without discrimination and also with the right to non-discrimination and equal protection of the law under article 26." She would also suggest that the word "insist" in the proposed rewording of the last sentence of paragraph 2 should be replaced by the words "wrongly contend".

16. Mr. WENNERGREN suggested that the words "and/or reports" might be added after the word "communications" in the first sentence of paragraph 2.

17. Mr. LALLAH said that there seemed to be a consensus that the reference to the right to self-determination in paragraph 2 should be omitted and that the last sentence of the paragraph, in the amended form suggested by Mrs. Higgins, should be moved to paragraph 4.

18. Mrs. CHANET said that she would not oppose the consensus, but wished to make it clear that confusion arose both in reports submitted by States parties and in communications.

19. Mr. LALLAH said that was true but, as he had explained earlier, the important point to be emphasized was the confusion between self-determination and rights under article 27 in some communications.

20. The CHAIRMAN said the Committee seemed to agree that in paragraph 2, the first sentence should be retained, the second sentence reformulated as Mrs. Higgins had proposed, the reference to self-determination eliminated, and the last sentence, as revised by Mrs. Higgins, moved to paragraph 4.

21. Paragraph 2, as amended, was adopted.

Paragraphs 3.1-3.3

22. Mr. SADI said he was afraid that paragraph 3.1 as now worded might give rise to the conclusion that minorities did not enjoy collective as well as individual rights.

23. Mrs. EVATT suggested that the last sentence of paragraph 3.1 should be reworded to read: "It is thus a right, the violation of which is cognizable under the Optional Protocol, of individuals or groups of individuals similarly affected." She would also suggest the deletion of paragraph 3.2 and the deletion in paragraph 3.3 of the words "rather than political secession or territorial fragmentation". Lastly, she would suggest that a reference to indigenous peoples should be introduced in paragraph 3.3 by inserting the words "as for example in the case of certain indigenous peoples" after the words "its resources" in the last sentence; a further sentence should then be added, reading "These factors may also be relevant in the right to self-determination."

24. Mr. EL-SHAFEI suggested that the last sentence of paragraph 3.1 should be retained, with the exception of the words "the violation of which is". He felt that paragraph 3.2 was important because it prepared the way for paragraph 3.3. He would, however, prefer a more positive formulation of the first sentence of paragraph 3.3, for example, by rewording it to read: "The Covenant does not advocate political secession or the territorial fragmentation of a State party. However, ...". In general, he felt that all three paragraphs were important because of their bearing on how article 27 of the Covenant was to be dealt with by the Committee.

25. Mr. NDIAYE suggested that the words "like all the others" should be added after the words "on the other hand" in the third sentence of paragraph 3.1, and the words "is so cognizable" at the end of the paragraph should be replaced by the words "may be cognizable". In paragraph 3.2, he felt that the ideas of ethnicity, religion or language should not be introduced, as the word "peoples" used in relation to self-determination clearly referred to all inhabitants of a territory. In paragraph 3.3, he suggested that the words "or territorial fragmentation" should be deleted as they were inaccurate, and that the last sentence of the paragraph should be revised because it might, as it stood, increase rather than diminish the confusion apparent in some communications and reports.

26. Mr. AGUILAR said he agreed that, in the last sentence of paragraph 3.1, the distinction between rights under the Optional Protocol and under article 27 of the Covenant should be clarified. In paragraph 3.2, he saw no need for the references to ethnicity, religion or language in common. In paragraph 3.3, the references to both political secession and territorial fragmentation should be deleted.

27. Mr. WENNERGREN suggested that the first sentence of paragraph 3.3 should be amended to read: "The Covenant is not meant to limit the sovereignty and territorial integrity of States." In the next sentence, the word "individual" should be inserted before the word "rights", and the last clause of the sentence, after the word "resources" should be deleted. He also suggested that the proposed reference to indigenous peoples, which he supported, should be included in paragraph 5.

28. Mrs. HIGGINS, referring to paragraph 3.3, said she agreed that it was important to assure States that article 27 of the Covenant was not an entitlement to claim a right of secession. She therefore suggested that the first sentence of the paragraph should be replaced by the following: "States parties enjoy sovereignty and territorial integrity. The rights provided under article 27 do not include that of political secession." She also agreed that the last clause of the next sentence, after the words "its resources", should be deleted, and that a reference to indigenous peoples should be included.

29. Mrs. CHANET said that in order to be consistent with paragraph 2, paragraphs 3.1-3.3 should be limited to the statement of principles. She agreed with the suggestions made by Mrs. Evatt and Mr. El-Shafei on paragraph 3.1 and felt that, as the word "peoples" could not be defined, the paragraph should be deleted entirely. With regard to paragraph 3.3, there was no need to reaffirm the principle of sovereignty; all that need be said was that the rights conferred under article 27 did not include the right of political secession.

30. Mr. MAVROMMATIS said that he agreed with the amendments to paragraph 3.1 suggested by Mrs. Evatt and Mr. El-Shafei. He also would prefer to delete paragraph 3.2, but if it was retained, it should be reworded in order to apply to people as a whole. Paragraph 3.3 must retain a clear message to States parties that they had nothing to fear about their sovereignty. He agreed with the new wording for that paragraph proposed by Mrs. Higgins.

31. Mr. POCAR said that he could accept the wording of paragraph 3.1 as amended, and would also prefer to delete paragraph 3.2, as he saw no purpose in defining the term "peoples".

32. The existing wording of paragraph 3.3 might give the impression that certain groups had the right to self-determination. He agreed that some reference to indigenous populations should be included, to convey the idea that, for the purposes of article 27, the term "minority" might include indigenous peoples.

33. Mr. SADI said that, since sovereignty rights were not the main issue in paragraph 3.3, the first sentence could be replaced by the following: "Enjoyment of rights under article 27 shall not prejudice the sovereignty and territorial integrity of States parties."

34. It was unclear to him whether individual or collective rights were being addressed in the remainder of that paragraph. Although he had no new wording to propose, he considered that only individual rights under article 27 should be addressed; the concept of the use of resources appeared to go beyond the individual rights of members of minority groups.

35. Mr. PRADO VALLEJO, referring to paragraph 3.1, said that no express distinction was drawn in the text of the Covenant itself between the right to self-determination and the right protected under article 27. He agreed that paragraph 3.2 should be deleted, because it dealt with rights that were clearly collective and not individual, and the Committee should avoid any attempt to define the term "peoples".

36. He noted, with regard to paragraph 3.3, that it was possible for indigenous peoples to be a majority in the population of a particular country; such was the case in many of the countries of Latin America. It should be established clearly, however, that article 27 did not provide protection for the right of secession. The second part of the paragraph should avoid any possible interpretation to that effect.

37. Mr. HERNDL said he joined the growing consensus that paragraph 3.2 should be deleted because it was improper, in that context, to attempt to define peoples. Regarding paragraph 3.3, it seemed inadvisable to comment on respect for sovereignty and territorial integrity in the context of article 27, which could not be used as a legal argument for secession. The wording proposed by Mr. Sadi for that section of the paragraph appeared best. He had difficulty with the reference to the use of territory, and agreed that the part of the second sentence after "resources" should be deleted.

38. The debate whether indigenous people were a population or a minority had been a lively one at the World Conference on Human Rights. That Conference had rejected the use of the term "indigenous peoples", opting to use the term "people". He believed that the references to such groups should be left aside for the time being.

39. Mr. FRANCIS said that in order to reaffirm that the right guaranteed under article 27 was not a right of secession and in order to make a positive statement on the scope of article 27, the last sentence of paragraph 3.1 should read: "Rather, they are rights to ensure the individual and communal enjoyment of the rights specified." Another sentence could then be added making reference to indigenous peoples, as Mrs. Evatt had suggested.

40. Mr. AGUILAR said he believed that the problem referred to by Mr. Prado Vallejo concerning the first sentence of paragraph 3.1 lay with the translation from English into Spanish and could easily be corrected.

41. In paragraph 3.3, he would reverse the order of the references to territorial integrity and sovereignty, since sovereignty devolved from a specific territory. In his view, territorial integrity and sovereignty should be mentioned in the paragraph, but the second sentence should be clarified by adding the following phrase to the end: "and article 27 did not encompass secession".

42. The CHAIRMAN, speaking in his personal capacity, said that he agreed with the suggested amendments to paragraph 3.1, and also felt that paragraph 3.2 should be deleted. A delicate balance must be struck in paragraph 3.3 between rights under article 27 of the Covenant, and territorial integrity and fragmentation. The Committee's approach had been that rights protected in article 27 were different from the right to self-determination. He favoured neutral wording not directly linking those two rights.

43. Mr. LALLAH said that, while he agreed that paragraph 3.2 must be deleted, he did not regret its inclusion in the draft because it had given rise to a very interesting discussion. He also joined the consensus that the final clause of paragraph 3.3 should be deleted. Mrs. Evatt had made a useful suggestion for the rearrangement of paragraph 3.1. In her view, the last sentence of that paragraph should read: "It is thus a right, the violation of which is cognizable under the Optional Protocol, of individuals or groups of individuals similarly affected." He was not certain the Committee could go that far; the group must have a particular right in order for the individual to enjoy it, or the individual could be in conflict with the group.

44. He proposed the following wording to incorporate the suggestions made regarding paragraph 3.1: "The Covenant draws a distinction between the right to self-determination and the right protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such, and is included, like the other personal rights conferred on individuals, in part III of the Covenant, and is cognizable under the Optional Protocol."

45. Turning to paragraph 3.3, he said that two alternative formulations had been proposed for the first sentence. Mrs. Higgins had suggested that it should read: "States parties enjoy sovereignty and territorial integrity. The rights provided under article 27 do not include that of political secession." Mr. Sadi had proposed the following version: "Enjoyment of rights under article 27 shall not prejudice the sovereignty and territorial integrity of States parties." Mrs. Evatt had suggested the inclusion in that paragraph of a reference to indigenous people, although Mr. Herndl had expressed some hesitation. It seemed, however, that Mr. Sadi's suggestion would allow such a reference. Mr. Prado Vallejo had stressed that some indigenous peoples were actually in the majority. Taking into account all those suggestions, he proposed the following wording for paragraph 3.3: "The enjoyment of the rights to which article 27 relates shall not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspects of the rights protected under that article - for example, a particular culture - may consist in a way of life which is closely associated with territory and use of its resources, as is the case with some indigenous peoples."

46. Mrs. HIGGINS said that she could go along with Mr. Sadi's proposal. The difficulty lay in the use of the term "indigenous peoples", which might give the impression that certain special rights were involved. She therefore suggested that the last two sentences of the paragraph should read: "However, one or other aspect of the rights protected under that article - for example, a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may be particularly true of indigenous persons when they constitute a minority." That would accommodate Mr. Prado Vallejo's comment.

47. Mr. SADI said that in view of Mrs. Higgins's proposal, he withdrew his reservations.

48. Mrs. CHANET said that the formula proposed by Mr. Sadi had dispelled her objections regarding the reference to sovereignty. She suggested that when paragraph 3.3, as amended by Mr. Sadi, was translated into French, the phrase "shall not prejudice" should be rendered as "ne porte pas atteinte" rather than "ne porte pas préjudice". Furthermore, "self-determination" should not be translated as "auto-détermination", but as "le droit des peuples à disposer d'eux-mêmes", in accordance with the French text of article 1 of the Covenant.

49. Mrs. EVATT suggested that the Committee could strengthen the point it was trying to make by adding the words "of individuals" after "the rights" in the second sentence, so that the sentence would read: "At the same time, one or other aspect of the rights of individuals protected under that article ...". Furthermore, in the third sentence, the term "indigenous persons" suggested by Mrs. Higgins, could be replaced by "members of indigenous communities which constitute a minority", inasmuch as paragraph 3.1 already made it clear that the rights involved were individual rights.

50. Mr. WENNERGREN proposed that Mrs. Evatt's suggestion should be further expanded by inserting the phrase "i.e., are looked upon as indigenous people" after the phrase "which constitute a minority".

51. The CHAIRMAN said that Mrs. Evatt's original wording should be retained, with the insertion of the word "individual" before "members of indigenous communities".

52. Mr. LALLAH said that, in view of the difficulties inherent in the text, he could accept Mrs. Evatt's suggestion. The Committee had thus reached a consensus regarding the reformulation of paragraphs 3.1 and 3.3.

53. Paragraph 3.1, as orally amended, was adopted.

54. Paragraph 3.2 was deleted.

55. Paragraph 3.3, as orally amended, was adopted.

Paragraph 4

56. The CHAIRMAN recalled that the Committee had agreed to transfer the last sentence of paragraph 2, as amended by Mrs. Evatt, to paragraph 4; he invited the members of the Committee to make suggestions as to where the sentence should be placed.

57. Mrs. EVATT suggested that the first four words of the sentence should be deleted and the remainder placed at the end of paragraph 4. The sentence would then read: "Some States parties who claim that they do not discriminate on grounds of ethnicity, language or religion wrongly contend that they have no minorities."

58. Mrs. HIGGINS agreed with that suggestion. She drew attention to Mr. Pocar's comment regarding paragraph 2, namely, that the Covenant did not actually provide for any right to non-discrimination. For that reason, in paragraph 4, article 2 (1) should be described as dealing with the enjoyment of rights without discrimination, while article 26 should be dealt with separately.

59. Mr. AGUILAR said that in the first sentence of paragraph 4, the word "equality" should followed by "before the law".

60. Mr. POCAR said that he agreed with the proposed reformulation of the paragraph.

61. Mrs. HIGGINS said that the paragraph would begin:

> "4. The Covenant also distinguishes the rights protected under article 27 from the rights protected under articles 2 (1) and 26. The guarantee of rights without discrimination under article 2 (1) applies to all the rights protected under the Covenant. It also applies to all individuals within the territory of a State, whether those persons belong to one type of minority or another of those specified in article 27, or whether they belong to majority groups."

The rest of the paragraph would remain unchanged.

62. The CHAIRMAN said that in the sentence beginning with the words "In addition", the term "non-discrimination" should be retained, as it was a distinct right under article 26.

63. Mr. AGUILAR suggested that in the second sentence read out by Mrs. Higgins, the words "of rights without discrimination" should be deleted, as article 2 (1) did not stipulate a right as such, but a principle.

64. Mr. WENNERGREN said that he had difficulties with the terms "minority" and "majority groups", as "minority" had not been defined. For instance, if 49 per cent of the population of a country belonged to a particular group, he wondered whether that group should be considered a minority.

65. The CHAIRMAN said that article 27 had been quoted in paragraph 1 of the draft general comment so as to avoid the need to define the term "minority".

66. Mrs. CHANET said that, while she supported Mrs. Higgins' amendment as a whole, she failed to understand why the third sentence should refer to "individuals within the territory of a State", while the last sentence of paragraph 4 referred to "individuals within its jurisdiction". That might give the impression that two different types of rights were involved. The Covenant did not distinguish between the territory of a State and its jurisdiction.

67. Mr. POCAR said that, while he could go along with Mrs. Higgins' proposals, he still had misgivings regarding the use of the expression "the right to non-discrimination". It was unclear whether article 27 provided for a general right to non-discrimination, as opposed to equality before the law and so on.

68. Mrs. HIGGINS said that her proposal accommodated Mr. Pocar's concern, as it referred to the guarantee of rights without discrimination.

The meeting rose at 1 p.m.

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Fiftieth session

SUMMARY RECORD OF THE 1295th MEETING

Held at Headquarters, New York,
on Tuesday, 22 March 1993, at 3 p.m.

Chairman: Mr. ANDO

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Draft general comment on article 27 of the Covenant (continued)

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 27 of the Covenant (continued)

Paragraph 4

1. Mr. LALLAH read out the revised version of paragraph 4 of the draft general comment on article 27:

> "The Covenant also distinguishes the rights protected under article 27 from the guarantees under articles 2 (1) and 26. The entitlement to enjoy the rights under the Covenant without discrimination applies to all persons within the territory or under the jurisdiction of the State, whether or not those persons belong to a minority. In addition, the right to non-discrimination, equality before the law and equal protection of the law is a distinct right guaranteed under article 26. It governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on persons within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not. Some States parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly claim that they have no minorities".

2. He did not support Mr. Wennergren's proposal to add the words "and to persons belonging to minorities" after the words "jurisdiction of the State" in the second sentence of the paragraph.

3. Mrs. HIGGINS said that she too did not support Mr. Wennergren's proposed amendment, since the current draft made it clear that everyone, and not only members of minorities, was entitled to certain rights.

4. Mr. POCAR said that, while he agreed with the general lines of the draft paragraph, he felt that the word "individuals", which was used in article 2 of the Covenant, should not have been replaced by the word "persons". He also disagreed with the statement that the right to non-discrimination was a distinct right guaranteed under article 26. In his view, the reference to non-discrimination should be deleted.

5. Mr. LALLAH said that the right to non-discrimination was an important and free-standing right which was protected under article 26, and reference to it could therefore not be eliminated.

6. Mrs. HIGGINS said that she supported the view just expressed by Mr. Lallah. The Committee had already rejected Mr. Pocar's suggestion during its consideration of article 26. She nevertheless wished to suggest the following compromise wording for the third sentence of the draft paragraph:

(Mrs. Higgins)

"In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law and non-discrimination in respect of rights granted and obligations imposed by the State."

7. Mrs. EVATT supported the draft paragraph proposed by Mr. Lallah and amended by Mrs. Higgins.

8. Paragraph 4, as amended, was adopted.

Paragraphs 5.1 to 5.4

9. Mr. LALLAH, introducing draft paragraphs 5.1 to 5.4, said that paragraph 5.1 defined the kinds of minorities which were protected under article 27. Paragraph 5.2 dealt with the existence of minorities. Paragraph 5.3 concerned linguistic minorities and paragraph 5.4 discussed the general right of freedom of expression. The Committee should perhaps examine each paragraph separately.

Paragraph 5.1

10. Mrs. CHANET said that, while she agreed with the principle underlying draft paragraph 5.1, she was concerned about the broad scope of the rights conferred under article 27, which protected not only the rights of citizens but also those of transients, including tourists. The Committee should try to find some formulation that would exclude tourists from those entitled to such rights.

11. Mr. WENNERGREN said that he did not support Mrs. Chanet's proposal to exclude tourists from protection. He wished to suggest, further, that, in view of its prevalence, the term "national minorities" should be used in the first sentence of the paragraph instead of "minorities".

12. Mrs. HIGGINS, supported by Mr. AGUILAR, said that paragraph 5.1 was not an appropriate place in which to include a reference to national minorities. On the other hand, she would support a reformulation of the paragraph to indicate that minority rights were not restricted to residents of a particular State. The paragraph was of great importance, in that the Covenant was the only instrument of its kind that protected the rights of minorities. Moreover, it addressed certain concerns raised in the Council of Europe about the failure of the European Convention on Human Rights to afford adequate protection to minorities.

13. Mrs. EVATT said that the first sentence of the draft paragraph might be amended to read: "The terms used in article 27 indicate that the persons designed to be protected are those who share in common a religion, a culture and/or a language."

14. She wished to suggest the addition of the words "but must respect and ensure them to all persons within its jurisdiction" at the end of the paragraph.

15. Mr. NDIAYE said that the question of minorities was a controversial one which lent itself to many different interpretations. The Committee could resolve the problem, however, by retaining the concepts of jurisdiction and territory, which were used in the Covenant, instead of those of nationals and residents.

16. Mrs. CHANET said that the Committee should be careful not to impose any undue burden on a State by requiring it to guarantee, for example, the right of expression of members of a religious minority who were present in its territory on a short visit. She therefore preferred the formula contained in draft paragraph 5.2.

17. Mr. LALLAH agreed with Mrs. Evatt's proposed amendment to the first sentence of the draft paragraph; however, her proposed addition at the end was not acceptable. He disagreed also with Mrs. Chanet's suggestion to limit the scope of the rights in question. He failed to see how a State could deny a tourist or any other kind of transient the right to practise his or her religion. The right should be clearly defined in paragraph 5.1, even though it was covered in paragraph 5.2, and should not be restricted to citizens.

18. Mr. NDIAYE said that if the Committee confined itself to the minimum required under article 27, it would not be able to ask States parties about their practice with regard to minorities or call on them to do more for minorities. For minorities living permanently in the territory of a State party, as distinct from visitors, something more than the strict minimum was required; States parties needed to take concrete measures to ensure the effective exercise of their rights.

19. Mr. LALLAH said that affirmative measures were covered in paragraphs 6.1 and 6.2. Moreover, paragraph 5 referred specifically to the obligations deriving from article 2, paragraph 1 of the Covenant. The Committee had to specify that article 27 applied not only to citizens and permanent residents, but also to visitors.

20. Mr. HERNDL said that he had some concerns in that respect; if a State party took affirmative action in favour of minorities which went beyond the scope of article 27, it would seem that such action could indeed be limited to permanent residents.

21. Mrs. HIGGINS said that she would prefer not to indicate that the provisions of article 27 applied only to permanent residents; in the case of migrant workers or visitors, the criterion of reasonableness would always apply.

22. Mrs. CHANET said that if the scope of the Committee's comments was too broad, States might opt not to take affirmative measures for any groups. She suggested that, in order to achieve a consensus, the words "in which they live or happen to be" should be deleted; then paragraph 5.2 would refer to migrant workers and visitors and paragraphs 6.1 and 6.2 would refer to the positive obligations of States.

23. Mr. NDIAYE said that the word "citizens" was very restrictive and referred only to persons with political rights; it would be better to use the word "nationals".

24. Mr. AGUILAR said that he agreed with that point. He also supported Mrs. Chanet's suggestion regarding the second sentence, since, in accordance with article 2, paragraph 1 of the Covenant, each State party undertook to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant; that was an absolute guarantee to all persons within its territory.

25. Mr. LALLAH said that he could accept Mr. Ndiaye's and Mrs. Chanet's suggestions; however, the last sentence of the paragraph must be retained.

26. Mrs. HIGGINS said that in English the word "citizen" had the overtone of entitlement to entry while the word "national" did not; she would therefore prefer to use the word "citizen".

27. The CHAIRMAN said that for each language, the appropriate term would have to be used.

28. Paragraph 5.1, as orally amended, was adopted.

Paragraph 5.2

29. Mr. SADI said that he had difficulty with the second sentence, since it implied that some sort of permanence was required, but that the degree of permanence was not relevant. He suggested the wording "the degree of permanence that the term 'exists' connotes is not relevant."

30. Mrs. CHANET said that she had difficulties with the last sentence because it was not clear what was meant by "objective criteria". Such criteria must be acceptable to members of minorities themselves.

31. Mrs. HIGGINS said that she could accept the last sentence; the situation to be avoided was that of a State determining the existence of a minority. Objective criteria referred to the differences in language or religion between minority groups and the majority.

32. Mr. EL-SHAFEI said that he had difficulty with the reference to freedom of association and expression, since there could be categories of people in a State whose freedom of association and expression were restricted by bilateral and other agreements; that could apply, for example, to asylum-seekers or political refugees.

33. Mr. AGUILAR said that the penultimate sentence should remain unchanged; it was not acceptable for freedom of association or of expression to be curtailed in order to maintain good relations between Governments.

34. Mr. SADI, supported by Mrs. CHANET, said that the last part of the last sentence should be deleted, and the words "to be established" could be changed to "determined".

35. Mr. POCAR, supported by Mrs. HIGGINS, proposed with respect to the penultimate sentence, that a comma should be inserted after the word "would", that the comma after the word "also" should be deleted, that the word "normal" should be replaced by the word "general" and that the word "of" before the word "freedom" should be replaced by the word "to".

36. Mr. WENNERGREN said that the right of peaceful assembly, which was closely related to freedom of association and of expression, should also be mentioned.

37. After a discussion in which Mrs. CHANET, Mr. NDIAYE and Mrs. EVATT took part, Mrs. HIGGINS, supported by Mr. POCAR, suggested that the last sentence should read as follows: "The existence of minorities is not to be decided by the State Party; rather, it requires to be established by objective criteria."

38. Mr. LALLAH said that that wording was perfectly acceptable. Concerning Mr. El-Shafei's reference to the apparently limitless nature of the freedom of association and of expression, he drew his attention to paragraph 5.4 which dealt with permissible limitations relating to those rights. He agreed with Mr. Pocar's amendments.

39. Mr. HERNDL proposed that, in the fifth sentence, the words "belonging to those minorities" should be added after the phrase "migrant workers or visitors" as had been done in the preceding sentence.

40. Mr. WENNERGREN pointed out that such workers or visitors might be the first members of a given minority in the country concerned.

41. Mr. LALLAH suggested that the phrase "belonging to those minorities" could be replaced by "constituting such minorities".

42. The CHAIRMAN said that if he heard no objections he would take it that the Committee wished to adopt paragraph 5.2 as amended.

43. It was so decided.

Paragraph 5.3

44. Mr. SADI queried the use of the phrase "as between themselves" in the second line.

45. Mrs. EVATT explained that the phrase was meant to reflect the fact that article 27 dealt with rights to be exercised in community with other members. The addition of the phrase "in public or in private" might help to make that point clearer.

46. Mr. MAVROMMATIS suggested that in the first sentence, the phrase "should not be confused with" should be replaced by "is distinct from".

47. Mrs. CHANET said that, in the same first sentence, it would perhaps be better to say "rights related to the means of expression through language" instead of "language rights". The word "similarly" at the beginning of the third sentence was inappropriate: freedom of expression under article 19

(Mrs. Chanet)

differed from the freedoms under article 27, in that the right granted by the former was available to all persons whether or not they were members of a minority.

48. Mr. WENNERGREN said that the wording in the penultimate sentence should be the same as that of article 14 (3) (f): "an interpreter if he cannot understand or speak the language used in court". As article 14 (3) (f) indirectly entitled any accused person to use the only language in which he was fluent, the last sentence should be reformulated to reflect that.

49. Mrs. HIGGINS agreed that the words "or speak" should be added; however, the last sentence as it stood clearly indicated what article 14 (3) (f) provided for. In line 6, the phrase "irrespective of the fact that" should be replaced by "irrespective of whether".

50. Mr. POCAR said that the issue of freedom of expression should probably be mentioned when the Committee dealt with cultural rights, as well as in the paragraph under discussion.

51. Mr. LALLAH, responding to Mrs. Chanet's comment, said that the word "similarly" could be replaced by "further". He agreed with Mr. Wennergren that the end of the penultimate sentence could read "where they do not understand or speak the language used in the courts". He concurred with Mr. Mavrommatis's suggestion and agreed with Mrs. Higgins that the word "choice" should be maintained in the last sentence. Mrs. Evatt's suggestion "in public and private" was acceptable. With regard to Mr. Pocar's remarks on cultural rights, Mr. Pocar could draft the appropriate language for insertion into the relevant paragraph at the appropriate time.

52. Mr. WENNERGREN, reverting to the penultimate sentence, said that the words "do not" should be replaced by "cannot" to bring it in line with article 14. In the last sentence, the word "otherwise" should be inserted between the words "the right" and "to use".

53. Mrs. HIGGINS supported the use of "cannot" instead of "do not".

54. Mrs. EVATT suggested that the addition of the phrase "in any other circumstances" at the end of the last sentence would be more explicit than "otherwise".

55. The CHAIRMAN said that he took it that the Committee wished to adopt paragraph 5.3 as amended.

56. It was so decided.

Paragraph 5.4

57. Mrs. HIGGINS, supported by Mr. WENNERGREN, suggested deleting the entire paragraph because its first sentence dealt essentially with articles 18 and 19 and was beyond the scope of the current draft general comment; the second sentence spoke of limitations under article 27, whereas there were none; and the third sentence simply expressed a generality.

58. Mr. LALLAH said that he would not object to the deletion of the rest of the paragraph, but the third sentence contained the very important idea that the exercise of cultural rights might not be salutary for the exercise of other rights - the situation of women was a case in point - and that culture could not be put forward as an excuse for limiting other rights. It was important to state that cultural rights were subject to the more general limitations under articles 18 and 19.

59. Mrs. EVATT, agreeing that the last sentence was important, suggested that it might be appropriate to use wording similar to that in the general comment on article 18 to the effect that freedom of religion could not be used to undermine other rights, as well as to refer specifically to equality of rights and non-discrimination.

60. Mrs. CHANET agreed that the last sentence should be kept, but not in relation to articles 18 and 19 and not in paragraph 5.4. It belonged either at the beginning or, preferably, the end of the entire draft general comment.

61. The CHAIRMAN, speaking in his personal capacity, concurred, and suggested that the Committee should adopt the last sentence in principle but defer decision on its final wording and placement, and that paragraph 5.4 as such should be deleted.

62. It was so decided.

Paragraph 6.1

63. Mr. NDIAYE suggested simplifying the first sentence to read: "Although article 27 is expressed in negative terms, it nevertheless does recognize the existence of that 'right' and requires that it shall not be denied."

64. Mr. EL-SHAFEI proposed deleting the last sentence of the paragraph: it was obvious that the protection of a right could never prevail over the limitations on that right.

65. Mr. LALLAH said that the point he had actually wanted to emphasize was that the right under article 27 was meant to be exercised by the individual in community with other members of the minority; however, he agreed that the sentence should be deleted and that Mr. Ndiaye's rewording should be adopted.

66. Paragraph 6.1 was adopted as amended.

Paragraph 6.2

67. Mr. LALLAH said that he had been influenced by the declaration on minorities in General Assembly resolution 48/138 in drafting paragraph 6.2, albeit in much more restricted terms. He was aware that the text might give rise to a whole series of problems and had included it mainly for purposes of discussion.

68. Mr. NDIAYE, supported by Mr. POCAR, said that all phrases making affirmative action contingent upon the availability of appropriate resources should be deleted, since States which were not in good faith could always adduce such justification to shirk their responsibilities.

69. Mrs. HIGGINS, referring to the first part of the paragraph regarding the option States had of taking affirmative measures to promote and develop the individual rights guaranteed by article 27, observed that in cases where there was a de facto inability to enjoy such rights, there might be an actual obligation for States to take affirmative action.

70. As to the last sentence in the paragraph, on the obligation not to discriminate between different minorities, she was not sure that a State would not be justified in adopting measures to redress, for instance, religious discrimination without doing the same for linguistic discrimination, or to redress religious discrimination as it affected one minority without at the same time taking action on behalf of other minorities.

71. The CHAIRMAN said that the general comments on articles 17 and 18 were germane.

72. Mr. EL-SHAFEI said that the concluding reservation to the obligation of non-discrimination seemed to imply that the Committee was countenancing differences in treatment between minorities provided they were justified by reasonable and objective criteria, which appeared to him to be a dangerous statement.

73. Mr. MAVROMMATIS agreed that the last sentence raised a number of problems and suggested that perhaps only the affirmative action part of the paragraph should be kept.

74. The CHAIRMAN observed that the general comment on article 26 covered some of the same ground as paragraph 6.2.

75. Mr. NDIAYE said that the last sentence should either be deleted or be redrafted and transferred to the end of the preceding paragraph, which had already dealt with measures of protection. In practice, States were indeed inclined to favour certain minorities while virtually denying the existence of others, as had been seen during the consideration of the report of the Islamic Republic of Iran at the previous session.

76. Mrs. EVATT said that paragraph 6.2 contained a very important idea, that the rights under article 27 were individual rights but depended on the circumstances of the State itself and on their enjoyment by the individual in community with the other members of his group, and that they could be eroded to nothing if the group itself was destroyed indirectly despite the wish of each individual to maintain the group. States could not stand back and allow that to happen.

(Mrs. Evatt)

77. Perhaps the text could be simplified to read:

> "Although the rights protected under article 27 are individual rights, they depend to some extent on the ability of the community or group to maintain its culture, religion or language in accordance with the wishes of its members, and positive measures to maintain the culture, religion or language are justified where that is necessary to avoid the erosion of the individual rights protected under article 27."

78. Mr. LALLAH said that he favoured Mrs. Evatt's wording, but would replace the phrase "the wishes of its members" by "the needs of its members".

79. Mr. POCAR observed that the reference to positive measures of protection in paragraph 6.1 was appropriate because paragraph 6.2, an important but difficult text, was there to strengthen it. There had to be a reference in paragraph 6.2 to the duty of States to adopt measures to protect the identity of any minority and to create favourable conditions for the exercise of rights, for to do otherwise could amount to denial of the rights themselves. He would, however, delete the reference to article 26 while maintaining the non-discrimination principle that flowed from article 2.1.

80. Mr. LALLAH suggested that Mrs. Evatt's proposed text should replace the beginning of the current paragraph 6.2, and that he would leave it to Mrs. Evatt and Mr. Pocar to work out the remainder of the paragraph on the basis of Mr. Pocar's valuable suggestion, omitting any reference to available resources and to articles 26 and 40 (1) but keeping the reference to article 2 (1).

81. He himself had added the last phrase regarding justification for any differences in treatment because that was what the Committee usually said in its jurisprudence, but the phrase could be deleted.

82. In any case, something should be said in paragraph 6.2 to lay the ground for what was said eventually in paragraph 8, an expression of hope about the kind of just society the Covenant had in mind.

83. The CHAIRMAN said that he took it the Committee wished to have paragraph 6.2 revised as proposed by Mr. Lallah.

84. It was so decided.

The meeting rose at 6.05 p.m.